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Note by the Secretary-General

The Secretary-General has the honour to transmit to the General Assembly the report of the Joint Inspection Unit entitled "Managing performance and contracts: part III of the series on managing for results in the United Nations system" (JIU/REP/2004/8).

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MANAGING PERFORMANCE AND CONTRACTS

PART III

OF THE SERIES ON MANAGING FOR RESULTS IN THE UNITED NATIONS SYSTEM

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ACRONYMS

ALD	Appointment of Limited Duration
CEB	Chief Executives Board for Coordination
CRG	Career Review Groups
FAO	Food and Agriculture Organization
IAEA	International Atomic Energy Agency
ICSC	International Civil Service Commission
ILO	International Labour Organization
ILOAT	ILO Administrative Tribunal
IMF	International Monetary Fund
ITU	International Telecommunication Union
JIU	Joint Inspection Unit
OECD	Organization for Economic Co-operation and Development
OIOS	United Nations Office of Internal Oversight Services
OPE	Overall Performance Evaluation
PAS	Performance Appraisal System
PDP	Personal Development Plan
PFP	Pay For Performance
PRP	Performance-Related Pay
RBM	Results-Based Management
RCA	Results and Competency Assessment
UNAT	United Nations Administrative Tribunal
UNDP	United Nations Development Programme
UNESCO	United Nations Educational, Scientific and Cultural Organization
UNFPA	United Nations Population Fund
UNHCR	Office of the United Nations High Commissioner for Refugees
UNICEF	United Nations Children's Fund
UNIDO	United Nations Industrial Development Organization
WFP	World Food Programme
WHO	World Health Organization
WIPO	World Intellectual Property Organization
WMO	World Meteorological Organization
WTO	World Trade Organization

I. INTRODUCTION

1. Most organizations of the United Nations system have in recent years moved towards results-based management (RBM), as indicated in Parts I and II of this report. They are not isolated in their efforts, which reflect a general cultural change that has brought measurement, delegation of authority and accountability to the forefront of management in national administrations. This "New Public Management" is characterized, inter alia, by the following trends:

- Greater attention to the specification of expected performance by agencies and officials;
- Improved information, reporting and monitoring systems within agencies and externally;
- Results-oriented employment arrangements containing incentives and sanctions based on individual performance.[1]

2. Parts I and II have also shown the difficulties encountered by United Nations organizations in effecting this cultural change, with Part I focusing on overall concepts of RBM and their implementation. Part II, on the other hand, focuses on delegation of authority and accountability as core aspects of human resources management that are of fundamental importance to the conceptualisation and implementation of RBM. This third part of the report addresses the issues of managing performance for results and designing contractual arrangements to support RBM.

3. Performance management is an integral part of a system of responsibility, authority and accountability. Individual performance must be accurately appraised against well-defined goals, measured through identifiable indicators, as must individual contribution to overall results, and managerial actions must flow from this appraisal, if RBM is to genuinely take roots at all levels of any given organization. Contractual arrangements must then be devised that support performance and espouse this results-oriented approach. In addition, if the empowerment of managers is assumed, subject to appropriate monitoring and accountability mechanisms, the type of appointment can also become a critical factor in the exercise of managerial authority.

4. It has also been noted in the previous parts of the report that because reforms in many United Nations organizations have only been undertaken very recently or are in the process of being applied, it is too early to evaluate their impact. This is particularly true in the field of performance management and contractual reform. Again, therefore, the Unit offers here a benchmarking framework, in the hope that participating organizations can use it to measure their progress towards RBM. Examples of policies and practices are cited that can usefully be taken as a basis to elaborate on these benchmarks and facilitate this progress.

5. As was the case for Part II, the Human Resources Management Framework[2] and other recent studies developed by the ICSC served as the starting point and main reference for the Inspectors in their reflection. They do not intend, therefore, to duplicate the very extensive and impressive work carried out by the Commission on the issues of performance management and contractual arrangements, nor to pre-empt its conclusions, but rather to offer to Member States, executive heads and staff of participating organizations a concise yet comprehensive picture of how these issues relate to results-based management.

6. This third component of the report was drafted concurrently with the first and second, and the methodology followed in their preparation is described in the overview of the report. In particular, an early blueprint of this text was submitted to discussions at a working meeting held in June 2004 which was open to all competent officials of the Unit's participating organizations, most of which were represented. Their active and constructive participation in this meeting was an important factor in the completion of this benchmarking framework. The Inspectors wish to thank all those who have contributed to the report.

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[1] "Accountability in public organizations – Changing Accountability relations: Politics, Consumers and the Market", OECD Public Management Service, 1997.

[2] *Official Records of the General Assembly, Fifty-fifth session, Supplement No. 30* (A/55/30), annex II.

II. PERFORMANCE MANAGEMENT

7. Performance management can be defined as the systematic process by which an organization involves its staff, as individuals and members of a group, in improving organizational effectiveness in the accomplishment of its mandate and goals. In the United Nations system, however, performance management was long understood in the restricted sense of performance appraisal, and systems develo in the 1980s and 1990s to provide such appraisal often wanted for credibility. The ICSC has shown that while all organizations of the system surveyed in 2003 applied a system of individual performance appraisals, those were rarely completed in a timely fashion and more than 95 per cent of the workforce in organizations was concentrated among the three highest ratings.[3]

8. In addition to these uneven compliance rates and general over-rating of staff, the systems in place lacked many of the features described below that make for a coherent and reliable performance management system. It is important that this situation be rectified, and several organizations are already in the process of doing so, because of the significance of adequate performance management systems to RBM, as clearly expressed by the secretariat of the World Health Organization (WHO): "Effective management of staff, giving constructive feedback and guidance and well-targeted learning are all part of enhancing organizational performance as they boost individual and team performance. Building an environment where there is quality dialogue about work and priorities between staff and manager is essential to reaching programme goals and to establishing a genuine RBM organization".[4]

What are the critical success factors for performance management systems?

A. Organizational culture

9. State-of-the-art performance management systems that use web-based tools cannot compensate for the lack of a genuine performance culture. Unless managers are ready to make a fair assessment of their staff's performance and take action accordingly, and unless staff members are ready to accept the managers' prerogative and responsibility to do so, the most sophisticated tools will fail. Only when staff and managers alike take the performance appraisal exercise seriously and acknowledge its usefulness, will the exercise acquire credibility and impact on performance. However, the Inspectors were informed by officials in many organizations of the United Nations system that because the corporate culture in these organizations favours harmony and compromise over frankness, managers remain reluctant to pass judgement, and are rarely equipped to manage the performance of their staff. Most management development programmes mentioned in Part II of the report attempt to address this challenge, but for a genuine performance culture to strike root, it is also necessary that senior managers themselves be held to account for their implementation of performance management systems.

> At the **United Nations**, implementation of the e-PAS (electronic performance appraisal system) is included as a key indicator in the **annual programme management plan** between the Secretary-General and the head of Department or office in order to emphasize the importance of senior management leadership in performance management.[5]

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[3] Qualitative and quantitative information on performance management in the common system, ICSC/57/R.2/Add.2.

[4] "Human Resources Management: The way forward for 2004-2005", document prepared by the Department of Human Resources Services of WHO.

[5] Qualitative and quantitative information on performance management in the common system, ICSC/57/R.2/Add.2.

Benchmark 1

The main pre-requisite for an effective performance management system is a change in the culture of organizations concerned.

B. Individual performance expectations and organizational goals.

10. A key element of a fully successful performance management system is the definition of the cascade of objectives at each level of the organization that will contribute to the overall achievement of the goals set for it by the governing bodies, and the establishment of a virtual, unbroken, vertical chain that shows linkages between each of these levels down to individual responsibilities.

11. While recent years have witnessed efforts by United Nations organizations to define better their strategic goals (as described in Part I of this report), a recent ICSC review of performance management in the common system has shown that goal setting is rarely properly undertaken at the individual level, and that descriptions of tasks and duties are often mistaken for objectives.[6] Even when a connection between departmental and work unit goals and individual work plans is established formally, this connection may be made on an ad-hoc basis rather than based on a systematic link to results-based management at the departmental level. In addition, the appraisal of individual performance itself does not always clearly show how and to what extent the staff member has contributed to the organization's results.[7]

12. This difficulty is not unique to the United Nations system, or even to public sector organizations. Research into efforts by companies in the private sector to align their corporate, departmental and employee goals shows that few actually succeed. In a recent survey, 73 per cent of companies said that they had a clearly articulated strategic direction, but only 44 per cent of those firms said their strategic direction was communicated well to the employees who must implement it. The survey also showed that in many cases, the corporate goals were considered applicable only to senior managers, not workers "on the frontlines".[8]

13. The Inspectors believe that special attention should be paid to cases when contradictions appear between the assessed performance of a programme and the assessment made of individual performances of staff members delivering the programme. Cases were reported to them in which most staff members of certain units were rated as exceeding performance expectations without evidence that the related programmes had also been over-implemented.

> At the United Nations Development Programme (**UNDP**), the **Results and Competency Assessment (RCA)**, enables each staff member to associate his or her performance targets to unit and office-wide targets. Thus, individual staff members associate their performance targets and assessments to: (a) substantive targets of the office as expressed through the Strategic Results Framework; and (b) managerial targets as expressed through the **Management Results Framework (MRF)**. This association links individual performance planning, review and assessment to the established programme and management priorities of the country office. Efforts are underway to establish clearer linkages between individual performance and unit/office performance and to ensure that contradictions between the assessed performance of a given unit and the assessed performance of the individuals working in that unit, can be identified and

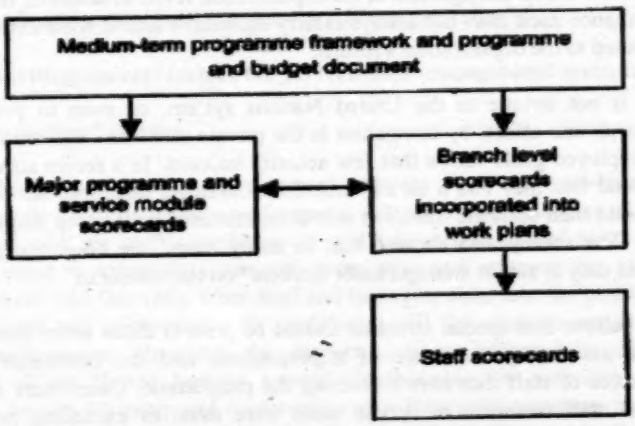
[6] Ibid.
[7] See for instance A/57/726, para. 46 with regard to the United Nations and the Report of the External Auditor A57/20, paras. 93-94 on integrated management of performance at WHO.
[8] "Human Resources' goals work best when they are tied to company success", in Workforce Management, 26 November 2003.

addressed.

The new Performance And Competency Enhancement (PACE) Programme being implemented at the **World Food Programme** (WFP) links the individual workplan and the organizational goals. The system was developed in conjunction with the RBM division to ensure a coherent approach to RBM by the organization at the individual level.

At the **World Bank**, the Overall Performance Evaluation (OPE) reflects how well staff members met their individual results agreements and learning plans, and demonstrated desired behaviours in the process. It is the Salary Review Exercise, however, that reflects management's judgement about the relative overall contributions of staff members at comparable levels in their unit. In other words, the OPE measures performance against individually set standards, whereas the Salary Review measures performance in relation to other staff.

At UNIDO, efforts are being undertaken to link the Medium-Term Programme Framework (MTPF) for 2004-2005 and the activities of individual staff members, through the development of scorecards at the organizational, branch and individual levels, as described in the figure below.[9]


Medium-term programme framework and programme and budget document
Major programme and service module scorecards
Branch level scorecards incorporated into work plans
Staff scorecards

14. Alignment of the performance appraisal cycle with the biennial programme-budget cycle of the organization may facilitate the required alignment of goals. While it may be impractical to complete and initiate a performance appraisal exactly at the end of a budgetary period because of the activities revolving around the closing of budgets, the cycle for performance appraisal could begin a few weeks later and run for the same length of time.

At the United Nations Educational, Scientific and Cultural Organization **(UNESCO),** under the new Performance Assessment Policy launched in 2004, the appraisal cycle has been purposefully set as a **two-year cycle**, to ensure alignment with the Organization's programming cycle. Within grade salary increments continue to be granted on an annual basis. The supervisor makes a separate recommendation for the increment, but this recommendation must be consistent with the performance assessment for the period concerned.

[9] UNIDO, Annual Report 2003, Chapter VI, Performance management.

15. It is also important that horizontal linkages be acknowledged and that performance management systems identify units both inside and outside of the organization whose collaboration is needed to achieve team and individual performance commitments. This has become all the more imperative since the number of inter-agency projects or activities has greatly increased in recent years, in particular at the field level, sometimes increasing inherent difficulties in measuring team performance.

16. Another difficulty may emerge in linking the performance of individuals to that of the team or work unit to which they belong with an increase in mobility and rotation among the staff of United Nations organizations that will imply a higher turnover in the composition of these teams.

Benchmark 2

Performance management systems communicate and clarify organizational goals to staff and align individual performance expectations with organizational goals.

C. Performance management as a managerial tool

17. Managers often see performance management as the administrative obligation to hold a yearly, often awkward, conversation with the staff they supervise about their achievements and possibly about their shortcomings, rather than the continuous dialogue on performance issues which must become the norm. This dialogue begins with setting the individual objectives at the start of the appraisal cycle, through the definition of a work plan that must become the "contract" between the manager and the staff member. These objectives must be specific, measurable, and realistic.

18. The workplan then becomes a key managerial tool, and dialogue is pursued all along this cycle with feedback provided by managers to their staff on a continuous basis. Experience has shown that timely communication and intervention can bring about significant improvements in staff members' performance. Performance discussions are therefore particularly imperative in cases where managers detect risk areas of performance not fully meeting the required standards or opportunities for improvements. It is also important that achievements and shortcomings be systematically recorded. The final discussion between supervisor and supervisee should therefore summarize, not replace, this ongoing feedback, and staff members should be able to anticipate, for the most part, the contents of this discussion and the resulting appraisal or rating.

19. At the United Nations, the Office of Internal Oversight Services (OIOS) has found that staff members continue, as in many other organizations, to focus essentially on the ratings aspect of the e-PAS, which is thought to have become a useful planning tool but not an effective communications tool. The OIOS states that if the main purpose of e-PAS is not only to appraise performance but also to build a culture of communications, teamwork and coherent work planning, either further communication efforts are needed to fully promote such understanding throughout the Secretariat or the very existence of the rating mechanism needs to be re-examined.[10]

20. Greater transparency in performance management could assist in shifting its focus from the appraisal and rating aspect to communicating and apportioning the goals of the organization and the work unit to the staff, thus engaging them more fully in, and ensuring greater accountability for, their achievement. The Inspectors believe, in particular, that individual work plans should be shared within a given work unit so as to convey to all its staff members

[10] A/57/726, para. 47.

information on their individual and collective contribution to its objectives while enhancing their confidence in the fairness of the exercise.

Benchmark 3

Performance management systems are seen as managerial tools that help the organizations run, direct and control their resources on a day-to-day basis.

D. Administrative considerations

21. While performance management is, first and foremost, linked to the development of a culture of communication and achievement, it does involve a number of formal steps such as the filling of an appraisal form. This bureaucratic process must be made as easy and straightforward as possible for both staff and managers. This may mean, in particular, that the number of ratings, if any, should be limited, since too many ratings make for a complex and friction-prone system and may render meaningful distinctions between levels of performance difficult. The ICSC indicated that more than half of the United Nations organizations have a five-rating system.[11] The World Bank also uses five rating categories (unsuccessful, partially successful/partially accomplished, fully successful/fully accomplished, superior and outstanding), while the International Monetary Fund (IMF) uses four ratings in its Annual Performance Review (1-outstanding performance, 2-fully satisfactory performance, 3-performance needs improvement, and 4-unsatisfactory performance).

The World Trade Organization **(WTO)** and the Organisation for Economic Cooperation and Development **(OECD),** on the other hand, use **three ratings**. WTO defines these ratings as "Significantly exceeds performance requirements, fully meets performance requirements, and does not fully meet performance requirements".

In its new Performance Assessment Policy, **UNESCO** has also opted for **three ratings only**, in a deliberate effort to break the culture of over-rating. Supervisors must now use the following rating scale: "fully meets expectations", "partially meets expectations" or "does not meet expectations".

At the United Nations Population Fund **(UNFPA),** with the new Performance Appraisal and Development policy, launched in August 2003, **no "overall rating"** is assigned to staff members. Rather, performance is measured through both performance narrative assessments and specific performance ratings that apply to work-plan outputs, developmental outputs and competency proficiency. Because no weight has been assigned to the relative importance of these three aspects of performance, and recognizing that performance cannot be "summed up" with one label, no general rating is given.

22. If ratings must be provided, careful guidance should be given to managers as to their use, although there are conflicting views as to the appropriateness of using "bell curves" for the distribution of ratings. Staff representatives are particularly apprehensive of using predetermined percentages for each performance rating as a means of budgetary control of performance pay (see Chapter III), a concern shared by the Inspectors.[12]

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[11] ICSC/57/R.2/Add.2, paras. 16-18.

[12] The issue of distribution of rankings as a result of the appraisal process was discussed in detail at the fifty-sixth session of the ICSC in April 2003. See the report on the work of the session issued as ICSC/56/R.11.

As noted above, **UNFPA** does not assign overall rating to staff's performance. Managers, however, are expected to rate the degree to which outputs have been achieved. Guidelines provided to managers and staff members indicate the "rating trends" which the organization would expect to see (although it is also stated that these trends do not represent a forced distribution of performance ratings and are provided only as guidance). Thus, 15 to 20 per cent of staff members are expected to be assessed as having "exceptional output achievement", 60 to 70 per cent as "fully achieved outputs", 10 to 15 per cent as "partially achieved outputs" and up to 5 per cent as "did not achieve outputs".

23. The United Nations Secretariat, for its part, has consistently argued that it monitors rating distribution "not to ensure conformity to a predetermined distribution curve, but rather to ascertain consistency of approach throughout the Secretariat" and has stressed that the widely held perception that the rating process was intended to impose a mandatory "bell curve", was not correct, when, as indicated in the guidelines for the Performance Appraisal System (PAS), there was no predetermined rating distribution. At the same time, it was observed that: "experience with many similar systems indicates that when staff are honestly and appropriately appraised, the vast majority are found to have "fully met expectations", while those who have consistently exceeded expectations or who have not adequately met expectations would naturally be few".[13]

24. Most organizations have also developed or applied electronic applications for their performance management systems, and steps are being taken by several to render these applications more "user-friendly". It should be noted, however, that in some field duty stations, practical problems such as lack of electricity makes it impossible to use these applications, and that managers should be allowed in such circumstances to use paper forms instead. In addition, electronic tools are not static or maintenance-free and require dedicated staff resources beyond their initial launch. Caution should also be exerted to prevent managers from using electronic tools available to avoid meeting face to face with their supervisees and holding performance discussions with them, thus defeating the very purpose of performance management systems.

Benchmark 4

Performance management systems are simple and light to administer.

E. Measuring achievements

25. Individual performance should be evaluated both upon achievement of results and the demonstration of values and competencies deemed essential for all staff members. While quantitative indicators can measure the achievement of results, qualitative indicators must also be defined to assess behavioural aspects of performance. Some organizations, however, in their efforts to shift to RBM, have been tempted to quantify all aspects of performance and do away with qualitative factors, by focusing exclusively on the achievement of objectives.

At the International Telecommunications Union (**ITU**), the Periodical Performance Appraisal includes both an assessment of key results achieved and of **core and functional competencies** displayed. Thus, supervisors must rate each of eleven competencies (and seven more for staff members with managerial responsibilities) from 5 (exceptional) to 1 (poor).

At the **World Bank**, the Overall Performance Evaluation (OPE) includes a

[13] A/C.5/51/55.

Results Assessment, with five key work programme areas/results for which the staff member is responsible, and a **Behavioural Assessment** of core Bank behaviours. The performance rating, therefore, must be based not only on an evaluation of the extent to which agreed results were achieved but also whether behavioural expectations were met. Guidelines provided to managers for choosing the appropriate rating indicate, for instance, that a staff member can be rated as outstanding not only if he/she performed at a level exemplifying "best practice" but if his/her demonstrated behaviours can also be viewed as benchmarks for others.

WTO's Performance Evaluation Report includes objectives agreed upon at the beginning of the review period but also an evaluation by the supervisor of aspects of the staff member's competencies that were critical in meeting the objectives (such as personal work management, language skills, interpersonal skills).

At the **United Nations**, the e-PAS now includes both an evaluation of the goals accomplished and of the core values and relevant competencies identified for the cycle. Hence, supervisors must rate their staff on each of the three core values, as well as the selected competencies. In addition, supervisors must indicate how the values and competencies were demonstrated during the period.

26. Even quantitative indicators can be difficult to define at the individual level to measure the achievement of expected results, as ultimately, many functions in United Nations organizations, as in all public administrations, do not lend themselves to quantitative planning. In the private sector, individual performance is often measured by an employee's contribution to units of revenue, profits or productivity. For many functions in the public sector, such bottom-line measures are often more difficult to identify. It is particularly true of situations of crisis in the field, where United Nations staff may have little control over their environment. For such functions, performance appraisal will always be a partially subjective exercise on the part of the manager, and should be recognized and accepted as such.

Benchmark 5

Performance management systems use appropriate and balanced measures of achievement of goals.

F. Consistency in assessment

27. One of the most frequent concerns expressed by staff representatives with regard to performance management systems is the need to ensure equity across various units within an organization by developing mechanisms that verify consistency in performance appraisals.

At **UNESCO,** the new performance assessment policy foresees that **review panels** will be set up in each Sector/Bureau/Field Office to review the quality, consistency and fairness of the performance assessment reports of all staff, to make recommendations to the supervisor if it is found that the assessment is of poor quality, not consistent or not fair, as well as to make recommendations on learning and development actions and to review any performance improvement plan that has been established.

At **UNDP**, the **Career Review Groups** (CRG), composed of one or more groups of managers in each office/unit, meet in February-March of each year to review the Results and Competencies Assessments (RCAs) of staff members, and at

other times during the year, as needed, to take up strategic human resources issues. The role of the CRGs is to:

- "Make a final recommendation and assign a rating to the overall performance of the staff member based upon a review of the staff member's Results Scorecard, Competency Scorecard, and Job Description to assure fairness, accuracy, and consistency in the ratings…";
- "Identify staff who could be considered as possible candidates for various types of assignments in the coming year;
- "Review the development needs and opportunities for each staff member within the context of improving current performance, or preparing for future assignments, and how that development will be achieved in the coming year;
- "Propose staff for promotion through the existing Appointment and Promotion machinery or take action on promotion of staff, as appropriate;
- "Enable the unit to set priorities and focus in a comprehensive manner on issues of effective human resource management. This includes contractual status of staff, rewards, learning, succession planning, reassignment or separation."

Officials at UNDP consider that the benefits gained from the CRGs, in particular their contribution to increasing the reliability of the RCA, outweigh their costs in terms of time and administrative requirements.

28. At the same time, the Inspectors caution that in accordance with RBM principles, the authority and responsibility for performance appraisal must ultimately rest on the manager.

Benchmark 6

Performance management systems ensure consistency in assessment throughout a given organization.

G. Career management and staff development

29. The ICSC Human Resources Management Framework highlights linkages existing between performance management systems and placement and retention, as well as career management and staff development. Performance management systems should provide objective and reliable input not only for managers to make informed decisions with regard to placement, retention and staff development needs, based on individual merit within a transparent process, but also for staff to decide on their career goals. For this to be true, organizations must be able to identify high performers through performance management systems as well as measure individual staff members' actual contribution to the realization of the organizations' objectives. However, many still perceive the lack of any tangible impact of the assessment made of their performances on their careers as the "missing link" in the results-chain being constructed.

30. Promotion, in particular, should not only be seen as a means of rewarding high-performing candidates, but rather as the mechanism, based on assessed performance, to identify and advance those staff members who have proven their ability to contribute to the work of the organization at a higher level and assume greater responsibilities. Many of the performance appraisal systems in place, however, still only measure individuals' performance through the achievement of results in the short term (normally annual cycles), and do not serve to identify those staff that possess the required competencies to develop long-term careers within the organization. They should be career management tools as well as appraisal tools.

31. At the same time, performance management systems should also be able to identify those staff members who, although they may possess the right competencies, have been placed in the wrong functions. Quite often, performance may be negatively affected not because organizations have the wrong people but because they have good people in the wrong job. This is especially true in organizations that are undergoing continuous rapid change and frequent restructuring. As part of the exercise of human resources planning and skills inventory mentioned in Chapter IV, therefore, the establishment of staff profiles and rosters would assist in matching staff's strengths with posts requirements and increasing overall performance.

> In identifying business requirements for its future Global Management systems, **WHO**'s Human Resource Services have stressed that the new system should support the maintenance of a profile for each staff member that encompasses personal goals and **career development action plans** which are linked to the competency framework and the regular performance assessment reviews.

32. The experience of the International Labour Office (ILO) with Personal Development Plans (PDPs), however, shows the difficulty of linking or merging career development tools and performance appraisal tools. Under its human resources strategy, it was envisaged that a new annual personal and career development discussion would replace the existing appraisal system, and that individual performance management would be handled as an ongoing managerial responsibility within the context of the performance management systems of the Office as a whole.[14] As a first step, a collective agreement on PDPs was signed in August 2001, but there have been implementation difficulties, particularly in respect of resource requirements and the heavy administrative workload. Furthermore, the existing performance appraisal system has been retained.

33. ILO's External Auditor has pointed out that PDPs are essentially development plans to improve future performance rather than measure past performance, and that there is still a need to retain a performance appraisal system. There was thus potential for confusion over the respective future roles of PDPs and performance assessments and a need for clarification in respect of the distinct requirements of development and performance.[15] Work on a new ILO performance appraisal system is ongoing and it is probable that this system will be kept separate from the PDP system, as the External Auditor has advised.

Benchmark 7

The results of performance appraisal are used as a basis for appropriate personnel actions, and in particular for career development.

H. Management of under-performance

34. Performance management systems must also be used to detect deficiencies or inadequacies and ascertain staff development needs, individual and collective. All performance management systems reviewed by the Inspectors provide for discussions on training needs for individual staff members to improve their performance if required, although, as noted by the External Auditor in the case of WHO, emphasis has not always been placed on this development aspect of existing performance management systems. The External Auditor observed that in many cases, individual performance results had not been used to formally develop specific training and development plans for each staff member.[16] In addition, the Inspectors note that not all systems allow for individual information to be collated across the

[14] GB.276/PFA/16, paras. 14-15; GB.277/PFA/10, paras. 14-17.
[15] GB.286/PFA/14, paras. 18-19.
[16] A57/20, para. 91.

organization concerned and analysed systematically to identify general staff development requirements and develop corporate training plans accordingly.

35. If under-performance cannot be corrected, consequences must be drawn. Data show that there are very few separations from United Nations organizations for unsatisfactory performance. The ICSC reports that for seven organizations, approximately 0.3 to 1 per cent of appraisals resulted in the non-renewal of contract.[17] While non-performers constitute indeed a small minority among staff members, it is difficult to believe that 99 per cent of the workforce in organizations of the United Nations system contributes effectively to the achievement of the organizations' objectives. Difficulties in separating staff members, other than very senior managers whose appointments are time-limited, are linked to deficiencies both in existing systems of administration of justice, contractual arrangements and performance management. These linkages show that the systems cannot be reformed separately but must be reviewed concurrently.

UNDP has established a rule by which if a staff member is found to have performed poorly, his/her assignments may be adjusted, but if he/she receives a second unsatisfactory appraisal, he will be provided with support to find employment outside of UNDP.

The performance management process at the **IMF** includes three clearly defined stages as follows:

- Stage 1: setting expectations and monitoring performance;
- Stage 2: documenting and discussing problem performance;
- Stage 3: establishing and **implementing consequences to poor performance**.

This last stage occurs when problem performance continues even after one or more performance discussions have been conducted. The performance may then be rated as "4" or "unsatisfactory", in which case the staff member is placed on probation for a period of at least six months. In fact, staff members can be placed on probation at any time for unsatisfactory performance (with written notification of specific areas in which he/she is required to improve). If the probation is not satisfactorily completed, the staff member's employment will be terminated. He/she is entitled to a minimum of 30-calendar day's notice, and confidential outplacement counselling is available. A "3" rating ("needs improvement) signals that staff members have not met expectations in one or two important areas of their work, and that they are expected to make specific improvements and will be closely monitored. Only two "3" ratings can be assigned in consecutive years, and only two "3 ratings" can be assigned in a five-year period. In either case, it is required that the staff member be rated either a "2" or a "4" in the year following the last "3 rating".

Benchmark 8

Performance management systems identify and address staff developmental needs. They also identify and address chronic under-performance.

36. In conclusion, performance management systems should be more clearly tied into RBM systems, thus serving to identify truly staff members' strengths and weaknesses, assessing the actual level of staff members' contribution to the organization's work programme, and guiding decisions as to training and career development.

[17] ICSC/57/R.2/Add.2, para. 32.

III. REWARDING PERFORMANCE

37. It is frequently stated that the main asset of United Nations organizations is their staff, and that the international civil service should be maintained and strengthened, through the continued application of the Noblemaire and Flemming principles. It is asserted as often, however, that United Nations system organizations may no longer be competitive in all labour markets. The Inspectors concur with both statements, and believe that in order for the United Nations organizations to regain some competitiveness, consideration should be given, when appropriate, to complementing, rather than replacing, the Noblemaire and Flemming principles with systems that provide links between compensation and performance.

38. Current compensation systems in public administrations, national and international, rarely encourage or reward outstanding performance. While career progression recognizes the assumption by individuals of increased responsibilities based on good performance over the years, there are few opportunities for promotion over the span of a career and specific rewards could be used to recognize outstanding achievements within a given period. A number of national administrations have adopted pay-for-performance (PFP) systems in recent years, with varying degrees of success, based on the belief that the role of compensation systems should evolve from merely paying employees to communicating and rewarding desired values, behaviours and outcomes.

39. The question of applying such schemes to United Nations organizations, whose common compensation system is also widely perceived as excessively based on seniority, and insensitive both to the labour market and to performance, has been debated over the past few years, so far inconclusively. The ICSC carried out work on pay for performance as early as 1994, identifying principles and guidelines for performance appraisal and management and for the recognition of different levels of performance, which included the introduction of merit awards. The Commission continues to believe that the current remuneration system does not adequately recognize performance contribution and competencies, and its Framework stresses the linkage which should exist between performance management and compensation, although it also points out that monetary awards should not replace the need for an overall competitive remuneration package. Therefore, it has decided to review, on a priority basis, the United Nations pay and benefits system.

40. In the context of this review, the Commission is also considering the question of the establishment of a broadbanding system. Such a system groups current grades into broad salary bands. Generally, there are no steps between the minimum and maximum pay for the band, and staff members progress within the band based on their performance. The ICSC points out that broadbanding would provide for career development and would enable organizations to use jobs and deploy staff in a manner that is more aligned with programme demands. Therefore, the Commission is launching in 2004 a pilot study of broadbanding/pay for performance in three United Nations organizations: the Joint United Nations Programme on HIV/AIDS (UNAIDS), the World Food Programme and the International Fund for Agricultural Development.[18] The Inspectors had the opportunity to discuss this issue extensively with the Chairman and other officials of the ICSC, with secretariat officials and staff representatives in various United Nations organizations, as well as in organizations outside of the United Nations Common system, in particular the World Bank, IMF, WTO and OECD.

41. Based on these discussions, and on the difficulties met by organizations that have already implemented broadbanding schemes, the Inspectors believe that great caution should be exerted in the planning and development of such schemes. A number of crucial measures must first be undertaken, including those listed below that are common to all pay-for-performance systems,

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[18] History of the Pay and Benefits Review, International Civil Service Commission, available on the Commission's website at: http://icsc.un.org/projects.

as well as the steps that are critical for the successful development of meaningful and reliable systems for managing performance and for the delegation of authority and accountability, as described in Part II of this report. They welcome, therefore, the "careful and deliberate approach" adopted by the ICSC in this regard,[19] and look forward to evaluating the results of the pilot study, which the Commission is conducting.

42. When developing new pay-for-performance systems, it should be kept in mind that most United Nations organizations already have in their staff rules and regulations a PFP tool in the form of the within-grade increment, which, if correctly applied can address, at least partially, some of the concerns expressed with regard to present compensation packages. However, this tool has rarely been seriously used over the years. While the ICSC noted that all organizations in its survey reported that the granting of annual salary increments is subject to the satisfactory performance of staff members, the Inspectors were told by officials in most organizations that the granting is in fact quasi-automatic. Indeed, ICSC figures show that withholding of annual increments is extremely rare (cases are limited to between 0.5 and 2 per cent of the workforce).[20]

43. Several organizations (including WHO, UNESCO and the United Nations Industrial Development Organization-UNIDO) are now taking steps to ensure that the within-grade increment is genuinely based on satisfactory performance and no longer granted routinely. WHO has also indicated its intention to apply its Staff Rule (555) that allows one, or exceptionally two, extra within-grade increases to be granted to staff members whose performance has been "especially meritorious beyond that which may reasonably be expected of a normally well-qualified staff member". The secretariat of OECD, which also grants meritorious step increases, indicates that it only does so to 60 employees, on average, out of 2300. It considers the system, which has not given rise to criticism from managers or staff, to be a very effective way of recognizing superior performance.

44. In deciding on the applicability of PFP systems, including broadbanding, to the United Nations, it would also be useful to gauge first the appeal of United Nations organizations as employers. Based on statistical and anecdotal data available at the time, the ICSC concluded a decade ago that while the data presented showed that there were some recruitment difficulties at some grade levels in respect of some occupations and nationalities, they did not demonstrate convincingly that the problems were widespread or acute.[21] The situation has certainly evolved since then, and the Deputy Secretary-General recently cautioned the ICSC that United Nations organizations were no longer competitive in the international labour market.[22]

45. However, this attractiveness or lack thereof remains very difficult to measure. The number of applications received for vacant posts that are announced is not a good indicator, with a great number of applications not emanating from candidates that could seriously be considered.[23] Recruitment difficulties would be better measured through the number of vacancies that have to be re-circulated. Other indicators of competitiveness would include retention rates; statistics on causes of separation other than retirements and critical skills shortages. While some organizations have started collecting information on causes of separation through exit interviews, among other means, this is rarely done on a systematic basis

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[19] ICSC/57/R.2, Framework for human resources management: Review of the pay and benefits system: Pay for performance and Broadbanding/Pilot study.

[20] ICSC/57/R.2/Add.2.

[21] *Official records of the General Assembly, Forty-ninth session, Supplement No. 30* (A/49/30), para. 160.

[22] ICSC/57/R.13, Report on the work of the fifty-seventh session.

[23] A report issued by OIOS, A/57/726, showed for instance that in the six months that followed the launch of the Galaxy system at the United Nations, the number of applications for vacancies roughly doubled. This swelling in the number of applicants is most likely a consequence of the posting of these vacancies on the world wide web, rather than of a sudden increase in the Organization's attractiveness as an employer.

and it would be useful for comprehensive statistics to be developed and compiled by the Secretariat of the Chief Executives Board for Coordination (CEB), for instance in its bi-yearly Personnel Statistics publications.

What are the critical success factors for pay for performance systems?

A. Fairness and consistency

46. The first requirement for a successful implementation of PFP systems is naturally the existence of a strong performance management system incorporating all the features described in Chapter II above as well as a reliable accountability system (see Part II). It is also important that the "rules of the game" regarding performance appraisal and its consequences are clear from the very beginning, when the staff member is recruited. Criteria must then be established to ensure consistency across all units of a given administration, and there may be a need to establish a separate body, seen as impartial, which would verify fairness on the distribution of awards.

> As part of its human resources management framework, **UNIDO** introduced, in January 2003, a **system of performance recognition and merit** aimed at recognizing and encouraging sustainable superior performance. Proposals for merit awards (monetary or non-monetary) and merit promotions are submitted to the **Performance Review Committee**, constituted by the Director-General after consultation with the Staff Council. The merit award, amounting to a non-pensionable lump-sum equivalent to the annual net value of two steps increment at the single rate, is awarded to recognize the personal contribution of deserving staff members against established criteria. Merit recognition for team leaders of the integrated programmes is granted, in the form of annual bonuses, by the Director-General. [24]

47. It is necessary to decrease the risk of a supervisor's arbitrary decisions about rewards such as merit bonuses by clarifying the standards against which employees' performances are judged. Studies on existing PRP schemes in national administrations have highlighted how important it is that the schemes be consistent and perceived to be so. In some instances reviewed, difficulties emerged as staff felt that the performance ratings and accompanying pay increases were applied and distributed inconsistently across the agency depending on the geographic location of the particular office.[25]

> ***Benchmark 1***
>
> ***Strong performance management and accountability systems are in place so that employees perceive that performance pay is reliable and awarded fairly and consistently.***

B. Inclusion of organizational results

48. It is widely agreed that the easier it is to measure outcomes, the easier it is to apply performance awards. Thus, in organizations that have income-generating activities (such as sales of publications or paid arbitrations), bonuses could be granted based on income generated. For many other activities, however, it is more difficult to assess the extent to which individual staff members have contributed to overall organizational performance, and many of the

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[24] Director-General's administrative instruction No. 16, 1 January 2003; UNIDO/ADM/HRM/INF. 22, 13 May 2003.

[25] Results-oriented cultures: Insights for U.S. Agencies from other countries' performance management initiatives, United States General Accounting Office, GAO-02-862, August 2002, page 19.

performance management systems in United Nations organizations do not clearly provide for such linkages, as described in Chapter II above.

49. In such cases, the contribution of individuals to the achievement of organizational objectives may be more easily assessed for senior managers (at the D-2 level and above). It should be noted that according to research, fully half of all companies that use broadbanding cover less than 10 per cent of their employee population in the banding system.[26]

> An Advisory Committee on Senior Level Retention and Compensation recommended in 1998 to the Canadian Government that compensation for deputy ministers and senior executives should be distinct from that of other employees to recognize their very different responsibilities and to reward achievement of specific objectives. It recommended compensation where the job rate, the fixed component, was paid for fully satisfactory performance and a variable component of compensation called **"pay at risk" was tied to achievement of individual and corporate objectives**. The recommendation was accepted and a Performance Management Programme was instituted for deputy ministers and senior executives. With the successful achievement of on-going commitments, deputy ministers now normally progress at 5 per cent per year through the salary range to reach the job rate (maximum) in approximately three years. "At risk pay", which is provided as a lump sum, is re-earned each year and is based on achievement of key commitments.[27]

Benchmark 2

The performance reward scheme emphasizes organizational results, not just individual performance.

C. Linkage between performance appraisal and salary increase

50. The very purpose of instituting PFP schemes would naturally be to restore such linkages in compensation systems that are seen at the moment to be mainly time-based, and in which base-pay increases rely solely on time spent at a pay level. While time-based pay progression systems worked well in organizations that had repetitive, routine jobs, and where there was small potential for differing levels of performance, they no longer appear adapted to organizations that want to emphasize the importance of performance.

51. Developing the tools to ensure such linkages, however, may prove particularly difficult. It is very important that salary increases and/or bonuses granted under PFP schemes are meaningful to staff members and commensurate with their contributions. As noted above, at the World Bank, while the Overall Performance Evaluation (OPE) measures performance against individually set standards, the Salary Review Exercise measures performance in relation to other staff. Staff members who receive high ratings on their OPEs should generally receive relatively high Salary Review ratings and vice versa. However, it may be the case that individuals who receive high ratings on the OPE may not receive the highest rating on the Salary Review, a situation that may create dissatisfaction among the staff. The problem arises if the OPE exercise generates higher ratings than can be accommodated by the Salary Review process, which is constrained by the closed budget envelope.

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[26] See "Alternative pay progression strategies: broadbanding applications", Performance Management Practitioner Series, United States Office of Personnel Management, April 1996.

[27] "Governing for Performance in the Public Sector, Performance Management program in the Canadian Federal Public Service", PUMA/HRM (2002) 12, OECD Public Management Service, February 2002.

Benchmark 3

There are clear links between performance appraisal and salary increase.

D. Financial considerations

52. In 1994, the ICSC recommended that organizations wishing to introduce merit awards should limit them to staff whose performance had been adjudged to be truly outstanding and that such staff should not exceed five per cent of an organization's workforce.[28] In 1997, the Commission undertook an in-depth review of the subject and changed its recommendation to the effect that performance awards and bonuses should not be payable to more than 30 per cent of the workforce. The Commission considered that this should be a sufficiently broad coverage to provide realistic expectation to the staff at large of receiving an award.[29] This is an important consideration, which must be balanced against budgetary realities.

WTO pay-for-performance system is set out in an Administrative Memorandum entitled **"Linking Pay and Performance"**. Quasi-automatic annual increments were replaced by the performance award system (PAS) in January 2002, but to allow supervisors and staff to become familiar with the new performance evaluation procedure, the direct link between performance and pay was delayed until January 2004, based on the performance evaluation reports for 2003. Objectives of the PAS include:

- Recognize staff members contributions;
- Reward staff members according to performance and achievements;
- Increase staff motivation;
- Increase overall productivity;
- Provide opportunities for career development (in conjunction with HR policies on promotion, mobility and training).

There are two types of awards in the PAS: a pensionable increase in salary and a non-pensionable lump-sum bonus. "Performance-related rewards shall constitute **on aggregate no more than 2 per cent of the total net salary budget** ..." (Staff Regulation 6.4); they are distinct from adjustments to the salary scale provided for in Staff Regulation 6.2. The secretariat-wide amount available for **Bonus Awards** is determined on the basis of the total amount available for performance awards less the cost of the pensionable increases.

Eligibility, the logistics of the process, the determination of the lump-sum bonus amounts and special provisions are also covered in the document.

As 2004 is the first year of operation, it is obviously too early to draw conclusions on how the PAS is achieving its objectives.[30]

53. The ICSC has now developed its proposals with regard to the eventual application of a pay-for-performance system in the United Nations system with an overall cost-neutrality objective. In particular, it notes that the elimination of step increments, involving the replacement of the current grade structure with a broadbanded structure, would result in the availability of salary amounts that could be applied to salaries distributed on the basis of the pay-for-performance system.[31] The reality of the current budgetary process in most United Nations organizations, and closed budget envelopes, however, mean that it may not be possible to increase the salaries of all outstanding performers. The experience of the World Bank points to the fundamental question of whether the amount of differentiation that can be put into the

[28] ICSC/57/R.2/Add.2

[29] A/52/30.

[30] WTO Administrative Memorandum No. 949, OFFICE (03)/90.

[31] See ICSC/57/R.11, Report on the work of the fifty-sixth session.

reward and recognition system is sufficient to reflect the evaluations that managers have made of their staff. Creating unrealistic expectations among staff, eventually leading to disappointment, may be detrimental to motivation and performance. Similarly, fluctuations in awards granted from one appraisal period to the next, which may be linked to funding stringencies rather than fluctuations in performance, may lead to dissatisfaction.

54. Many fear that any performance-related award might rapidly become an automatic entitlement, as is already often the case with the within-grade increment. With broadbanding, this would mean that all staff might find themselves at the top of a given band within a limited number of years, and some Member States have expressed concern about the potential financial implications of implementation of such a system. Many also point out that time-based progression strategies allow organizations to predict costs with more certainty. In all PFP schemes, therefore, the issue of cost must be borne in mind at all times and identifying stable funding sources will be essential to their success. Managers must realize, for instance, that meritorious step increases, which augment a staff member's rate of basic pay as well as pension entitlements, represent an increased cost to an organization on an ongoing basis, unlike a lump-sum cash award.

55. The Inspectors believe that PFP schemes should only be applied in United Nations organizations if their financial viability can be ensured through a resolutely innovative and even daring approach. A number of modalities can be explored, to be applied individually or in combination. One option could consist in modifying those financial regulations that provide for the remaining balance of any appropriation retained after the end of the financial period to which they relate, to be surrendered to Member States. As a way to promote efficiency while encouraging performance, Member States may want to change the regulation and accept that a certain percentage of any savings accrued at the end of the biennium, for instance 50 per cent, may be used by the organizations concerned as a source for financing remuneration increases linked to performance, subject to certification by Member States that the programme-budget has indeed been implemented to their full satisfaction.

56. Another option would involve even more far-reaching changes to financial regulations, and grant greater flexibility to executive heads in using the overall financial appropriation granted by Member States for a given biennium. Thus, executive heads would be free to use a pre-determined portion of the appropriation for posts to fund PFP schemes. This would be truly consonant with a full RBM approach and would avoid that Member States set arbitrary vacancy rates as a way to limit budget increases. It would imply, nevertheless, that the managerial decisions left to the discretion of executive heads, as chief administrative officers of their organizations, be taken not in a vacuum but along the lines of clearly defined and spelled out policies, regulations and rules, and that these decisions be subject to careful monitoring by their legislative organs with the assistance of oversight bodies.

57. Financing could also be secured for PFP schemes, but only partially, by applying sanctions for low performance. It has been noted above that within-grade increments should genuinely be granted subject to satisfactory performance only. Thus, while high performers could receive financial incentives in the form, for example, of "accelerated step increases", low performers would be subjected, at least, to "step freezing".

Benchmark 4

Funding is ensured and the pay for performance scheme financially viable.

E. Motivational impact

58. The Inspectors are of the opinion that motivation is, in general, and in particular in results-oriented organizations, a key managerial concern. As stated above, one source of dissatisfaction with present compensation systems is certainly the fact that they make little distinction between good and poor performers. Addressing this problem may constitute one of the greatest managerial challenges for United Nations organizations today, and many are placing their hopes in the development of PFP systems.

59. However, OECD studies of the implementation of PFP schemes in national administrations show that expectations with regard to such schemes have not always been met and that their impact on motivation has often been limited. In a review of PRP schemes in five national public administrations, the OECD analysed the extent to which performance pay schemes fit within the values and preferred work characteristics of public sector managers. It also looked at whether the awards paid are sufficiently motivating to lead to higher levels of effort by managers. OECD noted that because employees in national public administrations have been shown to be motivated by many factors (including in particular the nature of the work and career prospects), it is wrong to focus exclusively on the link between performance and pay when trying to improve performance in the public sector. [32]

60. Similarly, a survey carried out by the London School of Economics on the impact of performance-related pay (PRP) showed that there is evidence of a clear incentive effect for those gaining above average PRP, but that it is likely to be offset by a more widespread de-motivating effect arising from difficulties in measuring and evaluating performance fairly.[33] Review of another PRP programme that offered bonuses to senior executives of up to 10 per cent of base pay showed that the programme created a divisive and unhealthy sense of competition and undermined the organization's culture of teamwork and knowledge sharing.[34] Observers also point out that broadbanding, in particular, could lead to dissatisfaction and de-motivation in certain categories of staff, because promotions do not occur as frequently in such systems as they do in a narrow-range grade system, as there are fewer levels to which staff can be promoted.

61. Other studies have shown that national administrations are learning that to attract, manage and retain an effective and efficient workforce, "it's not just about money anymore", and that they must think in terms of broader "strategic rewards", which keep highly-skilled staff members engaged and focused on meeting strategic objectives and delivering results. Such rewards include compensation and benefits, but also career development and learning opportunities as well as issues related to the work environment, including organizational climate and work/life balance.[35] OECD has now commissioned a wide review of pay-for-performance systems.

62. The Inspectors believe that these questions on staff motivation are equally valid in the specific context of the United Nations system. They note that all the officials whom they interviewed concurred that monetary considerations were not the only, or even the main, source of motivation for staff in United Nations organizations to perform. Instead, humanitarian principles and ethical factors were mentioned, with moral incentives (such as merit certificates,

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[32] "Performance pay schemes for public sector managers: an evaluation of the impacts", Public Management Occasional Papers, OECD, 1997.

[33] "Does performance pay de-motivate, and does it matter", Centre for Economic Performance, London School of Economics and Political Science, 2001.

[34] "Results-oriented cultures: Insights for U.S. Agencies from other countries' performance management initiatives", United States General Accounting Office, GAO-02-862, August 2002, p. 19.

[35] "Strategic rewards", Workforce Performance Newsletter, Fall 2000, United States Office of Personnel Management.

private and public recognition, medals, etc.) and clear recognition of performance through career advancement often cited as more effective in encouraging performance than monetary incentives. At the same time, and while the United Nations system cannot pretend to compete with the compensation packages offered by some private corporations, there is a consensus that conditions of service in the United Nations system should remain sufficiently attractive to attract staff members of high calibre.

63. Generally, organizations must carefully assess their readiness for an effective performance management approach by first analysing the factors motivating their staff to perform better. Very few organizations in the United Nations system, with the exception of UNDP and, to a certain extent, the United Nations, have attempted to measure the understanding and perceptions of their staff with regard to results-based management and human resources management, or to identify the key motivational factors underlying their performance. As indicated in the overview of this report, the Inspectors contemplated the possibility of carrying out a system-wide staff survey, and shared an initial draft with all participating organizations for discussion, in an attempt to fill this important information gap. Due to a lack of time, however, it was decided not to carry out the survey at this stage. Secretariats of participating organizations may, however, want to develop such a questionnaire to decide, against a number of statements related to areas such as commitment, processes and skills, whether they are ready for PFP. Such exercises have obvious cost implications, as many organizations do not have the in-house expertise to design and analyse such wide surveys and must resort to external consultancies. Nevertheless, resources could be pooled among several organizations to facilitate their conduct.

> Since 1999, **UNDP** has conducted an annual **Global Staff Survey**. The Survey includes over 100 questions on such topics as recognition received from supervisors, job satisfaction, empowerment and the communication of goals, that are all very relevant to results-based management and performance management in particular. The high rate of participation in the survey (reaching 80% in 2002) shows the importance attached by staff members to this exercise, while the percentages of staff reporting overall satisfaction with their work (79% in 2002) and pride in working for UNDP (89%) are important indicators of the staff's engagement in the organization.

Benchmark 5

The reward system must be shown to have a clear motivational impact.

F. Acceptability

64. For PFP systems to gain credibility in United Nations organizations, it would be necessary to involve all interested parties and provide extensive training. Studies have shown that, when developing results-oriented performance management systems, actively engaging all interested parties, such as staff associations, helps improve staff's confidence and belief in the fairness of the system and increase their understanding and ownership of organizational goals and objectives. They have also shown, in particular, that broadbanding systems have been most successful in organizations where high levels of trust and understanding exist among employees and management. The following were identified as essential steps to gain acceptance for a new system: consult a wide range of actors early in the process; obtain feedback directly from employees; engage employee unions or associations.[36]

[36] See in particular "Results-oriented cultures, creating a clear linkage between individual performance and organizational success", United States General Accounting Office, GAO-03-488, March 2003 and

65. There again, given the responses received by Inspectors when they queried staff representatives, conducting staff surveys would provide important information to United Nations organizations as to whether a sufficient level of trust exists and whether staff buy-in can be ensured. In the results of the United Nations Organizational Integrity Survey commissioned in 2004 by the OIOS, for instance, staff perceptions of senior leaders, and in particular of how senior leaders place their value and ethics ahead of their personal interests, aspirations or prior relationships, indicate a low level of trust, which needs to be addressed.

Benchmark 6

PFP schemes must be widely accepted to become effective.

"Alternative pay progression strategies: broadbanding applications", Performance Management Practitioner Series, United States Office of Personnel Management, April 1996.

IV. CONTRACTUAL ARRANGEMENTS

66. The first guiding principle outlined in the ICSC Framework with regard to contractual arrangements is that they should be flexible so as to respond to organizational needs. The determination and usage of contracts is legislated for within each organization's staff regulations and rules to meet their particular requirements, and organizations of the common system have emphasized the need for continued flexibility in the development of a contractual framework that would be common to all of them. Many have undertaken in recent years their own review of contractual arrangements.

67. These reviews have often been undertaken concurrently with reviews of pay and benefits, as it is clear that there may be different approaches to compensation packages depending on the particular contracts under which staff members serve. Indeed, the Commission and the General Assembly have repeatedly emphasized the linkage existing between contractual arrangements and the review of pay and benefits.[37] The Commission's Human Resources Management Framework provides two additional linkages for contractual arrangements, with recruitment and retention (as contractual arrangements are the vehicle for delivering the employment conditions needed to attract staff), and with career management.

68. The Framework, however, does not make a direct linkage between contractual arrangements and performance management. Similarly, while organizations often emphasize in their contractual reform the need to provide greater employment stability to attract and retain talented candidates or to standardize contracts to reduce their administrative burden, too little is said of the impact of contractual arrangements on performance.

69. Staff contracts are in fact an essential element of an effective human resources strategy for empowerment and performance. They should be closely aligned with the type and duration of the function performed, easy to administer, fair and transparent. At the same time, recent experiments, as well as the jurisprudence of the United Nations Administrative Tribunals, have shown that in the absence of an effective performance management system and of adequately trained managers, the type of contracts granted makes little difference. Therefore, while the issue of contractual arrangements has long been mostly linked to those of compensation and cost savings, it should now be seen as an integral element of the performance management system.

What are the conditions for contractual arrangements to support an effective results-based management system?

A. Strategic alignment

70. Staff members are the vital medium through which organizations implement their operations and activities. Human resources planning must therefore become a central part of the results-based budgetary exercise rather than a peripheral one. With coherent human resources planning, organizations will be in a better position to ensure the achievement of their strategic objectives and to manage effectively key aspects of employment including contracts. This alignment will also ensure that the specific needs of each organization are reflected in the type of contracts granted to its staff.

71. Many officials met by the Inspectors have stressed that the current breakdown between "core" and "non-core" posts, whether explicit or understood, should be questioned in the context of constantly changing programmes priorities and sources of funding. The External Auditor of the WFP has pointed out in a recent review of the Programme's human resources strategy the need for flexibility and a strategic approach to human resource management, which

[37] See in particular paragraph 4 of General Assembly resolution 57/285 of 20 December 2002.

has been emphasized by changes in the nature of the Programme's income and activity in recent year. The new reality of funding sources means that some organizations no longer have a guaranteed level of funding to readily support the establishment and long-term career development of a core cadre of staff in the way that assessed contributions could. [38] For their part, staff representatives have expressed concern to the Inspectors that funds are increasingly being allocated to short-term goals and projects with staff working in ever more precarious situations, even when their functions are acknowledged to form an ongoing component of a long-term strategy.

72. Data on the distribution of organizations' staff by types of contracts reflect this evolution. CEB personnel statistics provide a breakdown of staff in all United Nations organizations with appointments for a period of one year or more by type of appointments (without time limit or fixed-term). As at 31 December 2000, 45.8 per cent of all such staff employed at Headquarters or other established offices held contracts without time limits, while 54.2 per cent held fixed-term contracts.[39] As at 31 December 2002, these figures had changed to 36 and 64 per cent respectively, indicating a significant increase in the proportion of staff granted fixed-term appointments. CEB documents do not provide data as to staff employed on short-term or temporary contracts. Nevertheless, statistics issued individually by organizations indicate that for some, recent years have also witnessed a dramatic increase in the number of staff employed on short-term or service contracts, as they seek increased flexibility in their use of human resources to respond to evolving priorities.

73. For instance, only 5 per cent of WFP's staff members worldwide were recruited under service contracts in 1998, as compared to 55 per cent at the end of 2003. At WHO, while 36.7 per cent of staff were employed on short-term contracts as at 31 December 1999, 49 per cent of staff employed by the organization as at 31 December 2003 held temporary appointments.[40] At the Food and Agriculture Organization of the United Nations (FAO), a total of 11,433 contracts for short-term staff and non-staff human resources were issued during the year 2003 (or an average of 952 per month), as compared to 1,210 such contracts issued during the period 1 January to 30 May 1999 (an average of 242 per month). FAO indicates that the growing use of such resources "allows the Organization to quickly adapt to changing requirements".[41] While organizations have reacted to changes in their budget structure and programme priorities by modifying the conditions under which they avail themselves of human resources, it is important that they develop the ability to forecast such changes and their impact on human resources requirements, so as to plan adequately for them.

> In a recent document on human resources management, the secretariat of **WHO** states that: "Integration with the biennial budget cycle will be assured, as human resources planning will be implemented as part of the Organization's strategic and operational planning. This will enable the Organization's human resources to be matched to its programme needs over time through a systematic assessment of future staffing requirements, be they for short, medium or longer-term assignments and functions".[42] The WHO secretariat also indicates that the strategic and operational planning stages of the programme-budget cycle will provide an opportunity to optimize the planning of human resources. When completed, the human resources forecast will identify broad staffing priorities over a possible four-year period. It will be

[38] WFP/EB.3/2002/5-B/1.
[39] CEB/2002/HLCM/3.
[40] Human resources: annual reports, A53/23 and A57/26.
[41] Statistics of Personnel Services, FC107/17 and FC93/15.
[42] "Human Resources Management: The Way Forward for 2004-2005",document prepared by WHO's Department of Human Resources Services.

supplemented by a detailed two-year plan that can build on more clearly defined goals and expected levels of financing.[43]

74. While many organizations have developed human resources planning tools in the last few years, not all have systematically integrated this planning into the wider organizational planning and budgetary exercises. Alignment also means that human resources planning must be carried out not only on a biennial or annual basis but also in the medium and long terms, and implies that the grade and post structure of any given organization be constantly reviewed in the light of its programme priorities. It further pre-supposes that organizations already have at their disposal an inventory of the main skills and attributes of their current workforce, which few have.

75. Once human resources requirements are identified, the secretariats define the post structures through which these resources can be organized to deliver programmes most effectively and efficiently. A full implementation of RBM would entail increased budgetary flexibility granted to Executive Heads by the governing bodies of United Nations organizations, with Member States approving an indicative post structure based on functions to be performed, rather than a rigid staffing table.

In adopting the programme budget for the organization for 2004-2005, the **United Nations General Assembly** decided to allow the Secretary-General to commence, on an experimental basis, with a redeployment of posts, as necessary, in the course of the biennium, to meet the evolving needs of the Organization in attaining its mandated programmes and activities. The experiment is limited to the redeployment of up to 50 posts organization-wide. [44]

Benchmark 1

Human resources are aligned with the strategic objectives of the organization.

B. Specific needs of international public organizations

76. The ICSC Framework acknowledged the existence of two kinds of civil servants, those with a career in the international civil service, and those without one, and recognized that both are necessary to achieve organizational mandates. United Nations organizations are striving to find the optimal equilibrium among the different types of appointments that would allow them to best fulfil their mission and attain their objectives. Most believe, as does the ICSC, that they must rely on a mix of contractual arrangements, with fixed term or continuing contracts on the one hand and short-term contracts on the other. The difficulty resides in striking the adequate balance between the two, to ensure performance and adapt to funding realities while retaining competitiveness and remaining a socially responsible employer.

77. Assessing the importance of tenure in the attractiveness of United Nations organizations as employers will be particularly important in finding this balance. Security of employment for staff has long been seen as one of the most effective tools for the organizations of the United Nations system to attract and retain the best candidates, and is still considered by many as an essential element of the compensation package offered by public sector entities. The ITU cites the lack of competitiveness in relevant labour markets as the "main reason for providing staff with greater opportunities to obtain permanent contracts".[45] In a changing labour environment,

[43] EB113/18.
[44] A/RES/58/270, para. 14.
[45] ICSC/57/R.3.

however, the continued relevance of job security in terms of competitiveness of the United Nations organizations is not ascertained, and few data exist to verify the extent to which it is it useful and feasible to guarantee tenure. It would be particularly helpful to carry out surveys of newly recruited staff in United Nations organizations to assess the weight of tenure prospects in their career choices.

78. In the absence of such information, evidence remains anecdotal and conflicting. Some studies indicate a preference of today's new entrants in the labour market for stability after years when stronger emphasis appears to have been placed by young job seekers on mobility and financial incentives. OECD studies of national administrations show that job security that can be guaranteed to some degree in large public organizations can be a major incentive when choosing a workplace. They also point out, however, that life-long tenure may cause problems from an organizational point of view when structural or other reforms are required or in cases where individuals are not performing at a satisfactory level. The studies conclude that although life-long tenure is no longer the norm, relative job security may still be one of the primary strengths of public sector in the future.[46]

79. The experience of organizations such as the Organization for Security and Cooperation in Europe (OSCE) and the International Atomic Energy Agency (IAEA) that have long had a policy of non-career appointments is equally inconclusive. The IAEA offers fixed term appointments to all Professional staff, beginning with appointments of a three-year duration. Thereafter, there can be an extension of two years. Five years is the normal tenure of service. This policy is based on a statutory requirement to keep the number of permanent staff to a minimum. However, it can lead to difficulties in attracting high-performers, as the relatively modest conditions of service offered cannot be compensated by a more stable and secure job tenure. In addition, candidates with a high level of expertise in mid-career sometimes may hesitate to accept a job offer knowing that they would need to seek another employer a few years later, when they are around 50 years old. The cost of administering staff and contracts when the turnover is high must also be borne in mind.

80. The World Bank notes for its part that as job security is generally an important element of a civil servants' total reward, governments wishing to adopt new-public-management style contractual arrangements may have to offer a higher base pay to compensate for lost job security.[47] Finally, the OECD highlights the fact that transferring knowledge and securing institutional memory is one of the key issues related to the length of tenure, and that although the new information and communication technology systems will be used widely in public organizations, they cannot compensate the memory or experiences of human beings.[48] Knowledge management, therefore, is also a factor to be taken into account in contractual reform.

81. A major concern for the organizations has been the need for flexibility in order to keep professional/technical capabilities up to date. Some organizations have found that in the course of long-term careers, technical staff tend to become bureaucrats and that the overall technical expertise of the organization is diminished. One response to this problem has been to limit the term of appointment, as is the case at IAEA, which notes that the policy of tenure of appointment is intended for it, as a highly technical and scientific organization, to remain on the cutting edge of its technical programmes. While the Inspectors recognize that organizations must safeguard their level of technical expertise, they note that other highly scientific organizations have opted for different policies that favour training and learning programmes, including active participation in scientific fora, as the most effective means of retaining that

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[46] "Public sector: an employer of choice-Report on the Competitive Public Employer Project", OECD, 2002.

[47] "Administrative and civil service reform" in worldbank.org/publicsector/civilservice/agency.

[48] "Public sector: an employer of choice-Report on the Competitive Public Employer Project", OECD, 2002.

expertise. Staff members, as long as they can demonstrate to the organization that their technical capabilities are sufficiently updated to justify a continuation of employment, can then devote their time and energy to the scientific work at the core of the organization's mandate.

82. As mentioned above, the proportion of staff holding career appointments in United Nations organizations has decreased significantly over the last decade, but discussions as to the desirability of moving from the current remuneration system to one more focused on an improved attractiveness of short-term contracts and as to the potential impact of such a move on the budget of the organizations, the rejuvenation of secretariats, on the intake of new skills and talents, the benefit of ensuring the continued "employability" of staff through training as well as on the Joint Staff Pension Fund, have yet to come to firm conclusions.

83. The Inspectors consider it imperative that these discussions progress decisively and that United Nations organizations now identify clearly the balance to be achieved between short-term and long-term contracts, as well as between job security and compensation packages, that will best support RBM. They stress that the type of contracts offered must reflect the nature of the function to be filled and its expected duration, and that attention must be paid to the relative importance attached by short-term staff members and longer-term employees to compensation packages and job security.

Benchmark 2

The specific needs of international public organizations are recognized and a balance is achieved between time-limited and indefinite contracts, which is conducive to performance.

C. Recruitment policies

84. Although, as noted in its overview, this report does not address in depth the complex issue of recruitment, which has been extensively discussed in a number of previous JIU reports, the Inspectors wish to stress a few key points to ensure that essential conditions are set at the very start for relations between organizations and their staff to be defined by performance, openness and equity. They also wish to acknowledge the efforts undertaken by several organizations of the United Nations system in recent years, including WHO, UNESCO, ILO, UNDP and the United Nations, to reform their recruitment policies for this purpose, while expressing caution that many more are needed.

85. In particular, the Inspectors wish to draw attention to the balance that must be struck between reaching out to very wide labour markets, as many of the new web-based systems do, and speeding up and streamlining recruitment processes that must become more responsive to the organizations' evolving needs. Effective screening tools must therefore be devised that filter out the large numbers of unqualified candidates that unavoidably apply.

86. Similarly, while they recognize that the wider use of generic job descriptions is desirable to expedite the recruitment process, they stress the importance of ensuring that vacancy announcements are specific enough as to the type of competencies, qualifications and skills required for a given function. From the very beginning, candidates should have a clear perception not only of the type of functions involved but also of their duration and of their career expectations, if any.

87. Part II of this report has addressed the issue of delegation of authority to managers for the use of human resources. Increased authority devolved to managers for the recruitment and placement of staff members must be clearly defined, and essential safeguards must be provided to ensure fairness and transparency in the selection process through the definition of clear and

verifiable criteria as well as of the ratings assigned to each of them. Managers must be provided with up-to-date tools to assist them in the selection process and the results of their comparative evaluation, based on those pre-defined criteria, of candidates should be duly recorded and reviewed by central bodies.

88. Most organizations of the United Nations system, like other large public organizations, face an additional challenge in planning for their human resources and setting their contractual policies, as many must abide by targets for gender and geographic representation in their professional workforce set by their governing bodies. These targets must be reached without prejudice to the main consideration in the selection of candidates, which is securing the highest standards of efficiency, competence and integrity in accordance with Article 101 of the United Nations Charter. This can only be achieved through a transparent and fair recruitment process that provides equal opportunities for all and focuses primarily on performance and results.

Benchmark 3

Transparent, effective and fair recruitment/placement systems are in place to support results-oriented contractual policies.

D. Contractual reforms and performance

89. The ICSC has addressed the issue of contractual arrangements during several of its recent sessions and has decided to establish a consistent framework for reducing the number of different contracts and standardizing their description. However, it has yet to finalize its work in this field due to the complexity of the issues at hand and the lack of data available to policy-makers. The Commission has found that there are too many contractual types across organizations and that the number should be reduced. It has now requested its secretariat to prepare, in collaboration with the organizations, for its fifty-ninth session, a model contract for each of the following three categories proposed, namely, (a) continuing appointments; (b) fixed-term appointments; and (c) temporary appointments; with sub-groups under each category that would clearly distinguish the key characteristics. Details on the conditions of employment, such as, the duration of tenure; the requirement for mobility; the requirement for a probationary period; the procedures for progression to other contract types; the compensation package; social security and health insurance provisions and procedures for extension and/or termination should be provided for each sub-group.[49]

90. As indicated above, many of the organizations of the United Nations system have already undertaken, or are currently undertaking, their own review of contractual policies. In addition to seeking to compensate for the lack of salary competitiveness, changes enacted or planned generally aim at:[50]

(1) Rationalization and efficiency savings

91. There is a clear consensus among all organizations of the United Nations system that contractual arrangements need to be simplified. The Secretary-General of the United Nations, for instance, has described the multiplicity of types and conditions of current appointments as "too complex, too rigid, and too administratively complicated".[51]

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[49] A/58/30, paras. 103-105.

[50] Reforms of contractual arrangements carried out in the ITU, UNHCR and WHO, as well as those proposed at the ILO, are described in detail in ICSC/57/R.3.

[51] A/55/253, para. 45.

92. The ICSC stresses that the simplification of existing contractual arrangements among organizations and the reduction of the administrative burden is a key feature of the new contractual policies. In 2000, the United Nations High Commissioner for Refugees (UNHCR) introduced indefinite appointments as the global contracting tool, available to all newly recruited staff with the exception of persons recruited for service of prescribed duration (such as staff on secondment and junior professional officers) and staff recruited on fixed-term appointments shorter than 364 days. On that occasion, the Office underlined that indefinite appointments are simpler to administer since they do not require the time-consuming procedure of extension. WFP also introduced indefinite appointment contracts for new international Professional staff in 2000.

93. Despite these recent reforms, the Inspectors have found that there is still a wide range of practices in the types and numbers of contracts offered by the various organizations of the United Nations system. They believe that as RBM systems take roots in United Nations organizations, the types of contracts proposed should eventually be divided simply between time-limited (including short-term and fixed-term) and indefinite contracts. While the first type would carry no career expectations for staff members, effective performance management systems should provide the mechanisms to identify and retain high-performers among them that possess the set of skills and competencies sought of career staff. Similarly, the continuation of indefinite contracts, which should be reserved for core functions, should be clearly linked to demonstrated satisfactory performance. The Inspectors are of the opinion that the concerns of staff representatives, who are reluctant to do away with permanent contracts, can be assuaged if such linkages between the continuation of contracts and actual performance can be established, based on solid performance management systems.

(2) Increased flexibility

94. The need for organizations to become more responsive and allow their managers to match the terms of appointment of their staff with operational requirements and budgetary realities has also certainly driven all recent attempts to reform contractual policies. In particular, it has been cited as the justification for the creation of Appointments of Limited Duration (or ALDs). ALDs under the 300 series of the United Nations Staff Rules were introduced in the United Nations "as a flexible contractual instrument that would enable it to recruit, at short notice and with minimum overhead costs, non-career staff at both the General Service and Professional levels for the Organization's peace-keeping, peace-making, humanitarian, technical cooperation and special operational needs".[52] UNDP, and more recently UNESCO and UNIDO, have also introduced ALDs.

(3) Fairness

95. Another reason underlying contractual review is the need for the organizations to behave, and be perceived, as socially responsible employers, and avoid excessive differences in the status and entitlements of some staff members, as repeatedly emphasized, in particular by WHO and the United Nations. Thus, the Secretary-General has noted the "inequitable situation with an increasing number of staff with long periods of service on fixed-term contracts who thereby are not entitled to severance benefits".[53] Short-term contracts holders, whose performance should be equally recognized and rewarded, are at an even greater disadvantage.

> A field staffing review was undertaken in recent years by UNESCO to determine the essential staffing requirements for each field office, and to harmonize and revise, as necessary, the contractual status of the concerned staff, in particular to ensure that those employed on Special Service Agreements for long periods were converted to Service Contracts, which carry social benefits.

[52] ICSC/43/R.15, para. 2.
[53] A/55/253, para. 45.

As a result, some 134 employees formerly recruited under SSAs have now received Service Contracts.[54]

At WTO, under current policy, short-term contracts carry medical and pension benefits (though not dependency allowances or home leave). This makes it easier to consolidate their positions within the regular budget when they complete four years of continuous service, as the conversion then becomes virtually cost-neutral for the organization.

96. Noting that a major source of dissatisfaction for United Nations staff in the field arises from the difference between conditions of service under the 100 and 300 series of appointments, the United Nations is already moving away from ALDs and now proposes to grant 100 series appointments to new mission appointees, except for short-term and project personnel, and convert current staff from the 300 to 100 series after four years of service. The Secretariat argues that ALDs have not produced the advantage of simplified administration that had been anticipated, while creating resentment vis-à-vis other staff serving on more favourable contractual arrangements. In addition, ALDs place an artificial limit (four years) on the employment of mission staff, at a time when the organization needs qualified and trained staff to take over complex functions in new missions. While the General Assembly has yet to decide on the replacement of the 300 series contract as a mechanism for the employment of staff in peace-keeping missions, it has already decided to suspend the application of the four-year maximum limit for ALDs under the 300 series until it decides on the matter at its fifty-ninth session.[55] UNDP has also indicated its intention to revise again its contractual policy in 2004 with a view to retaining only two types of appointments (100 series and service contracts) and thus avoid the perception that different "classes" exist among its staff.

97. Also with regard to fairness, the Inspectors would like to stress that that the many staff members still holding permanent contracts should not be deprived of their acquired rights. New contractual arrangements, therefore, should apply to other staff members and new recruits, although continued employment of permanent contract holders is also naturally subject to satisfactory performance as provided for in the staff regulations and rules.

(4) Enhanced performance

98. Although the ICSC indicates that enhanced performance management is one of the main objectives of the new contractual policies,[56] the Inspectors have noted that performance management is, in fact, too rarely associated with contractual reform. UNHCR may have been the most explicit in linking both, as indefinite appointments were introduced in part to address the specific issue of performance. It was noted that in the past managers were tempted not to extend a fixed-term appointment rather than deal with performance problems, and it was hoped that indefinite appointments would oblige managers to deal with performance issues as they arose.

99. This hope, however, did not materialize and in another significant policy change, faced with the need to adapt staffing levels to decreasing financial resources, UNHCR froze the granting of indefinite contracts to new recruits at the end of 2002. Officials met by the Inspectors explained that the new contracts policy had been suspended because it did not, in fact, meet the organization's needs to expand/reduce staffing levels in response to changing operational requirements. On the contrary, the new policy had made it increasingly hard to separate staff. The reversal was not linked to an increase in the number of appeals by staff; rather the organization was not proactive in implementing separations for performance reasons in the first two years of the policy, so that by the third year 91 per cent of its Professional staff

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[54] 166 EX/6, para. 21 and 32C/32, para. 30.
[55] General Assembly resolution 58/296.
[56] ICSC/57/R.3.

and 99% of General Service staff held indefinite contracts.[57] The UNHCR External Auditor has also expressed his opinion that the recourse to indefinite contracts had been made without a risk analysis from a legal and financial standpoint and should be reassessed.

100. This turnaround illustrates the difficulties encountered by United Nations organizations, in the absence of an effective performance management system and managerial accountability , in developing contractual policies that are truly consonant with results-based management.

Benchmark 4

The focus of contractual reforms is shifted to performance.

E. The jurisprudence of the Administrative Tribunals

101. Proponents of indefinite/continuing contracts often point to the jurisprudence of the administrative tribunals in the United Nations system, the ILO Administrative Tribunal (ILOAT) and the United Nations Administrative Tribunal (UNAT) as having established that holders of fixed-term contracts have a legal expectancy of renewal after a number of years of service with an organization. This factor was already cited some years ago by the United Nations Secretary-General as lessening the differences between career and fixed-term appointments as regards the duration of service. The Secretary-General noted that as a result of the Tribunal's decisions, all staff serving on a fixed-term appointment under the 100 series for five years or more are de facto on a career track.[58] Curiously, other organizations may use the same argument to support contrary policies favouring permanent contracts. Thus, ITU argues that it has decided to move towards granting permanent contracts after four years of satisfactory service in part because the Tribunals normally rule that even staff members on fixed-term contracts have expectations of continued employment after a certain continued period.[59]

102. A careful review by the Inspectors of both Tribunals' jurisprudence, however, shows that they have repeatedly emphasized the discretionary authority of organizations to renew short-term or fixed-term contracts as long as rules and procedures are respected, and in particular if unsatisfactory performance has been clearly documented. The Inspectors note, in particular, that according to ILOAT, "an organization owes its staff a general duty of care, and must not cause them undue hardship. A case of non-renewal is no exception. The duty may entail avoidance or reduction of injury that termination may cause…at least when it was not a short-term appointment, when the record of service was long and when the official had reasonable expectations of making a career in the organization".[60] The Tribunal has also remarked that: "even for fixed-term contracts, the case law holds that an appointment must not be terminated for unsatisfactory performance unless the staff member has received a clear warning leaving him time to improve… Before a decision is taken not to renew a contract, precedent has it that it is a fundamental obligation to examine the staff member's performance appraisal. Failure to comply with that obligation constitutes a procedural flaw as it has the effect of excluding an essential fact from consideration".[61]

103. The ILOAT case law also specifies what a warning must consist of and "that in assessing performance, it should be borne in mind that when an organization assigns a new duty to a staff member, particularly a probationer, it can be expected to afford appropriate training. If

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[57] Personnel Statistics as at 31 December 2002, CEB/HLCM.

[58] *Ratio between career and fixed-term appointments, report of the Secretary-General*, A/C.5/51/34, 22 November 1996.

[59] For a description of ITU's new contract policy, see ICSC/57/R.3, paras. 22-30.

[60] Judgement No. 1526, 11 July 1996, ILO Administrative Tribunal.

[61] Judgement No. 2104, 30 January 2002, ILO Administrative Tribunal.

the staff member fails to improve despite adequate warning, the organization may terminate his contract".[62] Thus, "a firm line of precedent has it that though a fixed-term appointment ends automatically at the scheduled date of expiry, the staff member must be told the true grounds for non-renewal and given reasonable notice of it even if the contract does not expressly so require".[63] In the event of non-renewal of a fixed-term appointment, there must be a definite decision and it must be notified to the official. In addition, it must be founded on grounds that are valid and of which the official must be duly informed with "reasonable notice" so that he may exercise his right to appeal if he wishes".[64]

104. However, the ILOAT also stresses on several occasions that: "the decision not to renew is a discretionary one and may be set aside only if it is *ultra vires* or in breach of a formal or procedural rule, or if there is a mistake of fact or of law, or if some material fact is overlooked, or if a plainly mistaken conclusion has been drawn from the evidence, or if there is misuse of authority".[65] The Tribunal further states that: "an organization enjoys wide discretion in deciding whether or not to renew a fixed-term appointment and a fortiori whether to convert it into an indefinite one. The exercise of such discretion is subject to review, but only to limited review, the Tribunal "respecting the organisation's freedom to determine its own requirements and the career prospects of staff"[66] and that "when the reason given is unsatisfactory performance, the Tribunal will not replace the organisation's assessment of a complainant's fitness for his duties with its own".[67] The Tribunal has also stressed that "at the discretion of the executive head, a temporary appointment may be extended or converted to a fixed-term appointment, but it does not carry any expectation of, nor imply any right to, such extension or conversion and shall, unless extended or converted, expire according to its terms, without notice or indemnity".[68] Finally, regarding legitimate career expectations, the Tribunal remarked that: "career prospects are not something that exist independently. If the refusal of renewal is lawful, so is the ending of the career".[69]

> The Inspectors examined 15 cases judged by the **ILOAT** over the last three years (2004, 2003 and 2002) which related to complaints filed for non-renewal of contracts, whether fixed-term, short-term or special service agreements.[70] They note that in eight cases the complaint was dismissed. While the Tribunal ordered that the decision of non-renewal be set aside or that compensation be paid in seven cases, all these related to the **non-observance by the organization concerned of rules or procedures**, such as the failure by the organization to provide a reason for the non-renewal or to give a warning to the contract holder that his performance was not satisfactory before the non-renewal of the appointment for professional inadequacy, and none related to the expectation of continued employment.

105. As for organizations covered by the UNAT, it is the established jurisprudence of the Tribunal that "even where there is no acquired right to renewal of a fixed-term contract, the Tribunal monitors the way the Administration exercises its discretion not to renew a contract, in order to prevent a discretionary measure from becoming arbitrary. It is especially important for the Tribunal to ensure the right of staff members to an equitable procedure when discretionary

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[62] Judgement No. 2162, 15 July 2002, ILO Administrative Tribunal.
[63] Judgement No. 1544, 11 July 1996 ,ILO Administrative Tribunal.
[64] Judgement No. 2104, 30 January 2002, ILO Administrative Tribunal.
[65] Judgements No. 1617, 30 January 1997, and No. 2295, 4 February 2004, ILO Administrative Tribunal.
[66] Judgement No. 1349, 13 July 1994.
[67] Judgements No. 1262, 14 July 1993 and No. 2148, 15 July 2002, ILO Administrative Tribunal.
[68] Judgement N. 2198, 3 February 2003, ILO Administrative Tribunal.
[69] Judgement No. 1610, 30 January 1997, ILO Administrative Tribunal.
[70] Judgements No. 2080, 2104, 2116, 2121, 2148, 2150, 2162, 2171, 2175, 2198, 2213, 2259, 2295, 2312 and 2315, ILO Administrative Tribunal.

decisions are taken by the Administration". The Tribunal has also established that "the terms and conditions of employment of a staff member with the United Nations may be expressed or implied and may be gathered from correspondence and surrounding facts and circumstances".[71]

106. At the same time, the Tribunal holds that "a series of renewals of fixed-term contracts does not give rise to an expectancy of renewal" in itself. And while a legal expectancy can arise "from countervailing circumstances" such as an express promise on the part of the Administration,[72] a "legitimate expectancy…is not the same as a mere wish or hope that a contract will be renewed".[73] The Tribunal has also found that "employment with the Organization ceases on the expiration of a fixed-term appointment and that a legal expectancy of renewal would not be created by efficient or even outstanding performance".[74]

107. In the case of staff members appointed under the 200 Series of staff rules, the Tribunal has clearly stated that these rules permit the Organization to separate a staff member from a post, even without prior notice and without regard to either the quality of the services that the staff member rendered or the staff member's personal attributes. The Tribunal has also stressed that as these appointments are entirely dependent on contingencies such as the requests of governments and the availability of funds, the 200 Series system "simply could not function as intended if staff members appointed …[thereunder]…had the same guarantees concerning employment and career development as staff members appointed under the 100 Series". At the same time, there is some precedent for discretionary departure from these rules "when sufficient countervailing circumstances may include (1) an abuse of discretion in not extending the fixed-term appointment; and (2) an express promise by the Administration that gives the staff member a legal expectancy of renewal".[75]

108. The Tribunal thus "seeks a delicate balance between the need to allow the Secretary-General of the Organization room to exercise judgement and the need to provide an essential protection to staff members working in the service of the Organization" and stresses that its oversight "does not extent to the merits of the non-renewal decision but focuses in guarantees of due process in the broad sense, a concept crucial to the rule of law".[76]

> The Inspectors have also reviewed eight judgements passed over a period of three years (between 2000 and 2002) by **UNAT** with regard to the non-renewal or non-conversion of contracts. In two cases, the complaints filed were rejected. In the six cases when the complainant was awarded compensation, only two are linked to the **existence of a legal or reasonable expectancy of renewal**, while the four others are linked to **irregularities** such as the Organization's failure to follow proper procedures, denial of due process or discrimination. In one such case, the Tribunal found that the Organization had failed to make … a [n]…effort to address and improve the performance of the Applicant".[77]
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> In another of these cases, **UNAT** refers to the question of **accountability**, addressed in Part II of this report. The case referred to the non-renewal of a contract, and the Tribunal found that "this was such a serious case of poor administration that consideration should be given to invoking **staff rule 112.3**, which provides for the possibility of holding a staff member financially liable for the actions on his or her part that caused the judgement to go against the

[71] Judgement No. 1052, 25 July 2002, United Nations Administrative Tribunal.
[72] Judgement No. 1000, 23 July 2001, United Nations Administrative Tribunal.
[73] Judgement No. 1029, 21 November 2001, United Nations Administrative Tribunal.
[74] Judgement No. 980, 17 November 2000, United Nations Administrative Tribunal.
[75] Judgement No. 962, 2 August 2000, United Nations Administrative Tribunal.
[76] Judgement No. 1052, 25 July 2002, United Nations Administrative Tribunal.
[77] Judgements Nos. 962, 980, 985, 1000, 1029, 1040, 1052 and 1060, United Nations Administrative Tribunal.

Administration". The Tribunal stated that the Secretary-General may decide on the basis of the staff rule that staff members who violate staff rules or regulations or administrative instructions should be held personally liable for the financial loss suffered as a result of their actions, and stressed that invoking staff rule 112.3 might dissuade staff members from deliberately ignoring the rules and would relieve the Organization of having to bear the cost of an intentional violation of the rules by its staff members.[78] Reference has already been made in Part II of this report to requests by the General Assembly for the Secretary-General to develop, as a matter of priority, an effective system of personal responsibility and accountability to recover financial losses to the Organization caused by management irregularities, wrongful actions or gross negligence of officials of the United Nations Secretariat that result in judgments of the Administrative Tribunal.[79] Efforts by the Secretariat to develop a new administrative instruction and amendments to staff rules were also described in that document.

109. These judgements, as well as UNHCR's experiment with indefinite contracts, highlight the fact that good management practices, in particular operative systems for accountability and performance management, as well as the respect for established rules and procedures, will probably have a greater impact on the effective use of human resources than the type of contracts adopted by the organizations of the United Nations system.

Benchmark 5

The jurisprudence of the Administrative Tribunals is taken into account.

110. In conclusion, clear policy decisions on contractual arrangements and pertinent amendments of the staff regulations and rules are fundamental to curbing the time-consuming and costly appeal process exercise. While many organizations of the United Nations system have focused a great deal of time and efforts in recent years on re-thinking their contractual arrangements, sufficient attention should also be dedicated to reviewing the administrative procedures related to these contractual arrangements, to ensure that the procedures are effective, efficient and afford staff members all due process while minimizing opportunities for frivolous appeals. Efforts must also be undertaken to establish mechanisms that ensure the application of these procedures. Supervisors must be adequately prepared for, and informed of, their managerial responsibilities with regard to performance management and the extension or renewal of contracts, as well as of the potential legal consequences of their actions in this regard. They must be held accountable for these actions, especially if additional authority is to be delegated to them in this area. Consequently, the Inspectors fully support the statement made by members of the CEB's Human Resources Network at their third meeting[80] that any new contractual framework must include a reference to improved transparency and fairness and the need for some mechanism to ensure accountability of management.

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[78] Judgement No. 1052, 25 July 2002, United Nations Administrative Tribunal.
[79] General Assembly resolution 57/307.
[80] CEB/2002/HLCM/14, para. 4.